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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,153

11/25/2003

Pat Inglese

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7010

23506

7590

09/19/2008

GARDNER GROFF GREENWALD & VILLANUEVA. PC
2018 POWERS FERRY ROAD
SUITE 800
ATLANTA, GA 30339

EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/722,153	Applicant(s) INGLESE, PAT	
	Examiner JACK H. MORGAN JR	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 114-136 is/are pending in the application.
- 4a) Of the above claim(s) 115, 120-126 and 132-136 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 114, 116-119 and 127-131 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 19, 2008 has been entered.

Election/Restrictions

2. Newly submitted claims 115, 120-126 and 132-136 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 115 and 120-126 are drawn to material which was non-elected following the office action of December 1, 2004. Note that action for reasons of distinction. Claims 132-136 are drawn to not the bag, as previously examined, but instead to a concrete handling apparatus which includes a materials storage device which has a discharge spout, and as such, are classified in 141/388. Previously the materials storage device with discharge spout was merely functionally recited.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 115, 120-126 and 132-136 are

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withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 114, 116, 118, 119 and 127-131 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur (US 5,607,237). LaFleur discloses a collapsible bag (Fig 1) having four side panels, a top panel and a bottom panel, the top panel having an opening therethrough, and a plurality of attachment members (18) proximate the opening of the bag capable of securing the bag to a material storage device, the attachment members comprising a plurality of straps (18 and 20), the bag further comprising an impermeable liner (Col 2, lines 59-62), the bottom panel being reinforced with anti-sag webbing (34) and the top panel being secured to the side panels and generally parallel to the bottom panel (Examiner notes that the top panel is generally parallel to the bottom panel, but not parallel thereto). With respect to claim 128, examiner notes that the straps (18 and 20) comprise elastic straps, as everything is elastic to some extent. La Fleur also discloses that the panels are formed of a woven material which permits water to exit through the material (Col 2, lines 56-59) but is silent as to whether or not concrete particles can exit therethrough.

As one of ordinary skill in the art would not want the bag to be leaking the material it was intended to hold, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the woven material of a size to prevent concrete particles from exiting therethrough in order to prevent material from leaking out of the bag. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

4. Claims 117 and 128 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur (US 5,607,237) in view of Meixelsperger et al. (US 6,866,073). LaFleur discloses all the limitations of the claims except for the straps comprising bungee cords. Meixelsperger et al. disclose a bag attached to a hopper (Fig 2 or 3) which has a bungee cord (101) employed to secure the bag to the frame assembly of a piece of machinery (Col 1, lines 44-46). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the collapsible container of LaFleur with a bungee cord extension in order to secure the container to a piece of machinery.

5. Claims 117 and 128 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur (US 5,607,237) in view of Gervais et al. (WO 01/79095 A1). LaFleur discloses all the limitations of the claims except for the straps comprising bungee cords. Gervais et al. disclose a bag attached to a hopper (Fig 2 or 3) which has a bungee cord (101) employed to secure the bag to the frame assembly of a piece of machinery (Col 1,

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lines 44-46). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the collapsible container of LaFleur with a bungee cord extension in order to secure the container to a piece of machinery.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782